

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

**JAMES TAMBONE and
ROBERT HUSSEY,**

Defendants.

**CIVIL ACTION
NO. 05-10247-NMG**

**TRIAL BY JURY
DEMANDED**

MOTION FOR LEAVE TO FILE AMENDED COMPLAINT

Plaintiff Securities and Exchange Commission (the "Commission") respectfully moves for leave to file an amended complaint in the instant action. The proposed amended complaint has been filed with this motion. In support of its motion, the Commission states as follows.

The Commission filed its initial complaint in this matter on February 9, 2005. The Defendants moved to dismiss the complaint on April 15, 2005. On January 27, 2006, the Court dismissed the complaint without prejudice. In its proposed amended complaint, the Commission has made additional allegations designed to address the issues raised by the Court in its decision.

Fed. R. Civ. P. 15(a) provides that leave to file an amended complaint "shall be freely given when justice so requires." "Where, as here, the case is in its early stages and there is no scheduling order setting a cut-off date for amendments, leave to amend is usually granted unless the amendment would be futile or would reward undue or intentional delay by the plaintiff." *See Wicks v. Putnam Inv. Management, LL*, No. Civ. A. 04-10988-GAO, 2006 WL 149040, *1 (D. Mass., Jan 19, 2006) (citing *Steir v. Girl Scouts of the USA*, 383 F.3d 7, 12 (1st Cir.2004)). Here,

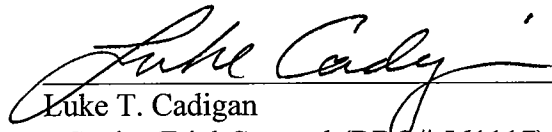
the case is in its early stages. Indeed, there has been no formal discovery and no scheduling conference or order. Although the Court dismissed the Commission's initial complaint, it did so without prejudice to the Commission's ability to file an amended complaint. To address the issues raised by the Court, the Commission has substantially enhanced its complaint, and thus the proposed amendment would not be futile. Finally, the Commission has not unduly or intentionally delayed in filing this amendment, but upon receiving notice of the Court's decision, expeditiously confirmed support for its new allegations and revised its complaint.

Accordingly, for the foregoing reasons, the Commission moves that it be granted leave to file the amended complaint that it has filed with this motion.

Respectfully submitted,

SECURITIES AND EXCHANGE COMMISSION

By its attorneys,




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Dated: March 13, 2006

LOCAL RULE 7.1 CERTIFICATION

I hereby certify that I have conferred with opposing counsel and have attempted in good faith to resolve or narrow the issues that are the subject of this motion.


Luke T. Cadigan
Dated: March 13, 2006

CERTIFICATE OF SERVICE

I certify that on March 13, 2006, I caused a copy of the foregoing to be served by the Court's Electronic Case Filing (ECF) system, or where noted, by first-class mail, upon the following counsel.

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